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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/701,786 | 11/04/2003 | Bruce Addis | RMI-5711CON2 | 7452 |
| 7590 | 04/14/2006 | | EXAMINER | |
| Howard J. Klein Klein, O'Neill & Singh, LLP 2 Park Plaza, Suite 510 Irvine, CA 92614 | | | HAYES, MICHAEL J | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3767 | |

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------------|------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/701,786 | ADDIS, BRUCE | |
| | Examiner Michael J. Hayes | Art Unit 3767 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 January 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 November 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6, 8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by GRANGIRARD et al. (US Patent No. 4,177,801). Grangirard discloses an apparatus comprising a first balloon 1, second balloon (inflatable conduit between shut-off valve 5 and reservoir 4), differential pressure gauge 3 that measures the difference in pressure between the two balloons, and pump 7. The pump is capable of inflating the first and second balloons simultaneously and at the same rate due to the tubing arrangement leading to both balloons.

Claims 1, 4, 7, 8, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by HICKEY (US Patent No. 5,181,517). Hickey discloses an apparatus comprising a first balloon 24, second balloon 150, and differential pressure gauge that measures the difference in pressure between the two balloons. The balloons can be filled by the same line 60 or separate pumps and a limiter is used when the balloons reach their maximum volume. See col. 11, line 43 - col. 12, line 24, col. 12, ll. 40-52, col. 14, ll. 52-62. The apparatus is inherently capable of inflating the first and second pumps simultaneously and at the same rate because the apparatus can use the same line 60 to inflate the balloons (col. 11, lines 57-60).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over HICKEY as applied to claim 4 above, and further in view of HOSKINS et al. (US Patent No. 4,740,203). Hickey discloses the claimed invention except for the use of tandem syringes. Hoskins teaches the use of tandem syringes to deliver from two reservoirs. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Hoskins in the apparatus of Hickey in order to supply from two reservoirs.

Re claims 2 and 3 it would have been obvious to one of ordinary skill in the art to use a balloon material that is elastomeric or non-elastomeric material to obtain the well-known benefits of these materials. One of ordinary skill in the art would know the material properties associated with elastomeric and non-elastomeric balloons and the selection of either type would be commensurate with general knowledge in the art.

Response to Arguments

Applicant argues that the apparatus used in the prior art is used in a different manner than the claimed invention and therefore the claims do not read on the prior art. The examiner maintains the rejections because Applicant's arguments address a method of using the apparatus and not to any structure that distinguishes over the prior art. The prior art discloses the claimed

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structure and is capable of performing the functional limitations recited in the claims due to the disclosed size, shape, and arrangement of balloons with the differential pressure gauge. The apparatus disclosed in the prior art is capable of having one balloon for insertion in a blood vessel or body cavity and a second balloon disposed outside the blood vessel or body cavity. The use of the prior art apparatus, particularly with respect to a body cavity, could be achieved inside and outside due to the spaced arrangement of the balloons of the prior art.

Applicant argues that the tube 2 disclosed in Grangirard is not inflatable. The examiner refers Applicant to col. 13, ll. 4-6 which describes a flexible tube that is filled with air.

Applicant has not pointed to any structure that distinguishes the claimed invention over the prior art. Arguments directed to methods of using the apparatus as compared to methods of using the apparatus of the prior art do not distinguish the claimed invention from the prior art in view of the capabilities of the prior art, as discussed above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Hayes at (571) 272-4959. The examiner can usually be reached Monday -Thursday, 7:00-4:30, and on alternate Fridays. The fax number for submitting official papers is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mjh
12 April 2006



MICHAEL J. HAYES
PRIMARY EXAMINER